

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 05-0052P

Income Tax

For the Calendar Year 2003

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the late penalty, and the underpayment penalty for estimated tax.

STATEMENT OF FACTS

The late penalty and estimated tax underpayment penalty were assessed on the filing of a calendar year individual income tax return for the year 2003.

The taxpayer is an individual residing in Indiana.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer argues the late penalty should be abated as the taxpayer did not have the K-1 information available to pay the tax by the due date. Also, the taxpayer says the penalty is excessive in that it is 42.4%.

With regard to the excessive penalty of 42.4%. The Department points out the taxpayer is mistaken. The unpaid tax balance is assessed 10% penalty and the tax balance only accrues simple interest at the rate of 4% per year.

With regard to the lack of information, the Department has in place a system where the taxpayer can pay an estimate at the due date and then request a refund at the actual filing of the return. It is a system that is in common use for taxpayers who do not have the information available to file an income tax return at the due date.

45 IAC 15-11-2(b) states, “Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.